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AIR RESOURCES BOARD
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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (ARB) 1001 I Street, Sacramento, California 95814, and Taylor-Dunn Manufacturing Company and Taylor-Dunn Corporation (Taylor Dunn) with its principal place of business at 2100 West Ball Road, Anaheim CA 92804.

I. RECITALS

(1) California Code of Regulations, title 13, section 2400(a)(2) states, "Every new small off-road engine that is manufactured for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce, and that is subject to any of the standards prescribed in this article must be covered by an Executive Order, issued pursuant to this article."

(2) California Health and Safety Code section 43154(a) states, "Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) per vehicle. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."

(3) Taylor Dunn manufactures industrial tractors, loaders, carriers, and similar equipment, including Taylor-Dunn G-150 series, with 18 horsepower combustion engines .

(4) ARB alleges that Taylor Dunn sold seven units of the Taylor-Dunn G-150 series without the required ARB Executive Order.

(5) Taylor Dunn fully cooperated with ARB in the investigation of this matter and has no prior history of violations at ARB.

(6) Nothing contained in or referred to in this Agreement shall be deemed to constitute an admission by Taylor Dunn.

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against Taylor Dunn for the alleged violations referred to above, ARB and Taylor Dunn agree as follows:

(1) As a condition of this Agreement, Taylor Dunn shall pay the total sum of twenty thousand dollars ($20,000) as a penalty to the California Air Pollution Control Fund, subject to the following terms. Payment shall be made by check payable to the California Air Pollution Control Fund and addressed to:

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Mr. Greg Honzay
Air Resources Board, Enforcement Division
PO Box 2815
Sacramento, CA 95812

(2) Taylor Dunn represents that it understands the legal requirements applicable to Health and Safety Code section 43150 et seq. with respect to the delivery, rental, lease, sale, offer to sell, or introduction into commerce in California of non-California certified motor vehicles or engines.

(3) This Agreement shall apply to and be binding upon Taylor Dunn and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(4) This Agreement constitutes the entire agreement and understanding between ARB and Taylor Dunn concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and Taylor Dunn concerning these claims. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(5) In consideration of the payment by Taylor Dunn to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases Taylor Dunn and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, affiliates, customers, end-users, and suppliers from any and all claims that ARB may have based on the facts and allegations described in the Recitals above.

(6) Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

(7) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.

(8) Each provision of this Agreement is severable, and in the event

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that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(9) The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

(10) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the grounds that said party drafted it.

(11) **SB 1402 Statement** Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024. The per unit penalty in this case is a maximum of $5000 per unit per strict liability violation. The penalty obtained in this case is based on an approximately $2857 per unit penalty for the seven units that were allegedly sold to California consumers.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43154, is appropriate because Taylor Dunn allegedly sold vehicles with engines not certified by ARB.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level.

(12) Taylor Dunn acknowledges that ARB has complied with SB 1402 in

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prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024; has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level. Taylor Dunn does not necessarily agree with ARB's conclusions regarding assessment of the penalty factors.

(13) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

(14) The penalty in this case was based in part on confidential business information provided by Taylor Dunn that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Taylor Dunn that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Taylor Dunn, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Taylor Dunn may have secured from its alleged actions.

California Air Resources Board

By:
Name: Ellen Peter
Title: Chief Counsel
Date: 2/13/2014

Taylor-Dunn Manufacturing Company and Taylor-Dunn Corporation

By:
Name: Mark K. McGregor
Title: Chief Financial Officer
Date: Jan. 28, 2014